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November 20, 2012

By Electronic Delivery

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

Re: New York Independent System Operator, Inc.'s
Proposed Tariff Revisions Regarding a Blind Trust Mechanism;
Docket No. ER13___

Dear Ms. Bose:

Pursuant to Section 205 of the Federal Power Act,[1] the New York Independent System Operator, Inc. ("NYISO") hereby submits proposed revisions to the rules governing "prohibited investment" by its directors, employees, their spouses and their minor children ("NYISO Employees"). These rules are set forth in the NYISO's Independent System Operator Agreement ("ISO Agreement") and its Open Access Transmission Tariff ("OATT").[2] The proposed revisions will establish a blind trust mechanism to provide NYISO Employees who hold the securities of certain market participants or their affiliates with an alternative to divestiture while preserving the NYISO's independence.[3] The NYISO requests that the Commission waive its usual 60 day notice period and make this blind trust mechanism effective on January 1, 2013, so that it will be part of the NYISO's compliance program at the start of the calendar year.

The NYISO's tariffs and agreements generally prohibit a NYISO Employee from holding the securities of a market participant or its affiliates and require divestiture of any such

[1] 16 U.S.C. § 824d.
[2] Capitalized terms that are not otherwise defined herein shall have the meaning specified in Article 1 of the OATT and Article 2 of the NYISO Market Administration and Control Area Services Tariff.
[3] The term "securities" is defined in Section 12.7.1 to Attachment F of the NYISO OATT as referring to "stocks, stock options, bonds and any other instruments of debt or equity."

prohibited investments within six months. Since this restriction was imposed at the start of NYISO operations, the NYISO-administered markets have evolved and expanded significantly to include a much greater number and wider range of market participants. Over time, the list of securities that are prohibited investments for NYISO Employees has grown to include several hundred publicly-traded companies, including many that are not primarily engaged in the electric sector and whose NYISO market activities are *de minimis* in relation to the companies' overall business activities. As a result, this blanket restriction has grown to present a possible impediment to recruiting and retaining the most qualified directors and employees. Furthermore, this restriction can cause unreasonable financial harm to a NYISO Employee who is required to divest the securities of a company that does not present a meaningful conflict of interest concern, especially when the securities become prohibited investments as a result of an unforeseen change in circumstances.

The NYISO proposes to provide NYISO Employees with the option of placing certain, qualifying investments in a single blind trust as an alternative to divesting them. The Commission has previously accepted the adoption of a similar blind trust mechanism by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), finding that a blind trust is consistent with its independence requirements for independent system operators ("ISOs").[4] To further assure the independence of the NYISO and NYISO Employees, the NYISO's proposed blind trust mechanism includes a substantial additional measure of protection. The blind trust will only be available for use with the securities of companies that are not primarily engaged in the electric sector and whose NYISO market activities are *de minimis* in comparison to their overall business activities. The financial condition of these companies cannot, therefore, be materially impacted by NYISO actions. The proposed revisions were approved by the NYISO's stakeholder Management Committee on November 2, 2012, and by the NYISO Board of Directors on November 19, 2012.

I. <u>List of Documents Submitted</u>

The NYISO submits the following documents:

1. This filing letter;

2. A clean version of the proposed revisions to the OATT (Attachment I); and

3. A blacklined version of the proposed revisions to the OATT (Attachment II).

The NYISO will make a supplemental filing to submit clean and blacklined versions of the proposed revisions to the ISO Agreement. Due to technical restrictions imposed by the

[4] *See* Midwest Independent Transmission System Operator, Inc., Order Accepting Tariff Revisions, 115 FERC ¶ 61,255 at P. 11 (May 26, 2006) ("Midwest ISO Blind Trust Order").

eTariff system, the NYISO is unable to electronically submit the proposed revisions to the ISO Agreement at the same time as it electronically submits its proposed revisions to the NYISO OATT. With the exception of this Section I, the filing letter for the supplemental filing will be identical to this filing letter.

II. Copies of Correspondence

Copies of correspondence concerning this filing should be served on:

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III. Background

A. Prohibited Investment Rules for NYISO Employees

Section 5.01 of the ISO Agreement and Section 12.7 of the NYISO Code of Conduct in Attachment F of the NYISO OATT establish that a NYISO Employee is generally prohibited from having a financial interest in a market participant or its affiliate. The purpose of this prohibition is to ensure that NYISO Employees are independent of and do not have a financial incentive to favor any market participant.[6]

[5] The NYISO respectfully requests waiver of 18 C.F.R. § 385.203(b)(3) (2011) to permit service on counsel for the NYISO in both Washington, D.C. and Richmond, VA.
[6] NYISO Employees must certify to the NYISO each year that they do not have a prohibited financial interest in a market participant or its affiliates.

A NYISO Employee can come to hold the securities of a market participant or its affiliate through a variety of circumstances. For example: (i) a NYISO Employee may have obtained the securities before joining the NYISO; (ii) a NYISO Employee may involuntarily acquire the securities as a gift or inheritance; (iii) a company in which a NYISO Employee owns securities, or its affiliate, may become a NYISO market participant; or (iv) a company in which a NYISO Employee holds securities may become affiliated with a NYISO market participant through a merger or other corporate organizational change. Under any of these circumstances, a NYISO Employee is required under the current rules to divest the prohibited securities within six months.[7]

B. Impact of the Evolution of the NYISO's Markets

The number and nature of NYISO market participants have expanded substantially since the NYISO began operations in 1999 when the current prohibited investment requirements were established. The number of NYISO market participants has risen from 119 in 2000 to over 350 today. NYISO market participants and affiliates now include a wide range of companies, including many whose primary business activities are outside the electric sector and have only limited involvement in the NYISO markets. These include large commercial and industrial companies that participate solely in the NYISO's demand response programs and large financial institutions with subsidiaries that participate in certain aspects of the NYISO's markets.

Currently, NYISO market participants and their affiliates number several thousand companies. The identities of these companies change frequently as entities enter and withdraw from the NYISO's markets and as the compositions of corporate families change. Of these market participants and affiliates, several hundred issue publicly-traded securities, including some of the most widely-held securities. As the list of prohibited investments has grown to include companies not traditionally engaged in the electric sector and companies with only a *de minimis* interest in the NYISO markets relative to their overall business activities, the NYISO's prohibited investment rules risk harming the NYISO's ability to recruit and retain the most qualified NYISO Employees. In addition, these rules have the potential to cause unnecessary financial harm to a NYISO Employee who is required to divest securities that do not present any real conflict of interest concern.

[7] OATT Attachment F § 12.7.2.

IV. Description of Proposed Tariff Revisions

A. The NYISO's Proposed Blind Trust Mechanism

The NYISO proposes to revise Sections 12.7.1, 12.7.2, and 12.14 of Attachment F of the OATT and Section 5.01 of the ISO Agreement to establish a blind trust mechanism to provide NYISO Employees that hold the securities of certain qualifying market participants or their affiliates with an alternative to divestiture.[8] The blind trust mechanism requires an independent third party to have full managerial discretion over a trust's holdings. The trust beneficiary – the NYISO Employee – would not have control over or visibility into the holdings of the trust.

Upon request, the NYISO will determine whether a company's securities qualify for placement into a blind trust as an alternative to divestiture. A company's securities will be eligible for the blind trust option if the company is not primarily engaged in the electric sector and its activity in the NYISO markets is *de minimis* in relation to its overall business activities such that its financial condition cannot be materially impacted by NYISO actions. Specifically, a company's securities will qualify if: (i) the company is not classified as an electric power company under the North American Industry Classification System (NAICS),[9] and (ii) the company's (or its affiliate's) total participation in the NYISO's markets during the company's most recently completed fiscal year constituted less than 0.5% of the company's gross revenues in that year.[10]

If a company satisfies the proposed two-part test, a NYISO Employee may elect either to place those securities into a single blind trust or to divest them. The NYISO will update this analysis annually using the most recently available financial data. If, as part of the annual review, the NYISO determines that a company no longer satisfies the two-part test, then any of its securities that were still held within a blind trust would have to be divested by the trustee.

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[8] A NYISO Employee will not be permitted to obtain the securities of an existing market participant or affiliate for purposes of placing the securities in a blind trust.

[9] The NAICS was developed and is used by government agencies to classify businesses for multiple purposes, including collecting, analyzing, and publishing statistical data. The NAICS's "Electric Power Generation, Transmission, and Distribution" industry group (2211) includes companies that generate electric power (22111), transmit electric power (221121), distribute electric power (221122), or operate as electric power brokers or agents to arrange the sale of electric power via distribution systems (221122).

[10] A company's total participation in the NYISO's markets is equal to the sum total of the absolute value of all of its purchases and sales during the most recently completed year.

B. The Commission Has Determined That a Blind Trust Mechanism Is Consistent with its Independence Requirements

In its Order No. 888, the Commission established that an ISO must be independent of its market participants.[11] As its ISO principle number 2, the Commission stated that: "An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards."

The NYISO's proposed blind trust mechanism is consistent with the Commission's independence requirements for ISOs. The Commission has previously accepted the adoption of a similar blind trust mechanism by the Midwest ISO.[12] The Commission found that a blind trust mechanism does not violate the Commission's independence requirements because an independent third party has sole discretion over the employee's holdings and the employee cannot be certain of the holdings in the trust.[13] For this reason, an employee does not have a financial incentive to favor a particular market participant or class of market participants. Furthermore, the NYISO's proposed blind trust mechanism includes an additional safeguard to protect the independence of NYISO Employees. The NYISO's proposal does not permit use of the blind trust for the securities of companies that are primarily engaged in the electric sector or whose financial condition could be materially impacted by NYISO actions. The Commission, therefore, should accept the proposed blind trust mechanism as a reasonable approach to promote the NYISO's ability to recruit and retain the most qualified directors and employees and to prevent unnecessary financial harm to NYISO Employees.

V. Proposed Effective Date and Request for Waiver

The NYISO respectfully requests that the Commission waive its usual sixty-day notice period and make this filing effective no later than January 1, 2013, pursuant to Section 35.11 of the Commission's regulations.[14] Good cause exists for the Commission to grant the requested waiver. The January 1, 2013, effective date will ensure that the blind trust mechanism is a part of the NYISO's compliance program at the start of the upcoming calendar year and will be in place as the NYISO moves into the final phases of its new director search process. As described below, the NYISO's proposed revisions have been reviewed and approved by the NYISO's stakeholders and Board with broad support.

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[11] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,730-32 (1996).
[12] Midwest ISO Blind Trust Order at P 11.
[13] *See id.*
[14] 18 C.F.R. § 35.11.

VI. Requisite Stakeholder Approval

The tariff revisions proposed in this filing were discussed with stakeholders in the September 20, 2012, Business Issues Committee meeting and the October 4, 2012, Market Issues Working Group. The tariff revisions were approved by show of hands with abstentions at the October 17, 2012, Business Issues Committee meeting. At the November 2, 2012, Management Committee, the tariff revisions were approved by stakeholders with only a single no vote. On November 19, 2012, the NYISO Board of Directors approved the proposed tariff revisions for filing with the Commission.

VII. Service List

This filing will be posted on the NYISO's website at www.nyiso.com. In addition, the NYISO will e-mail an electronic link to this filing to the official representative of each party to this proceeding, to each of its customers, to each participant on its stakeholder committees, to the New York Public Service Commission, and to the New Jersey Board of Public Utilities.

VIII. Conclusion

WHEREFORE, for the foregoing reasons, the New York Independent System Operator, Inc. respectfully requests that the Commission accept the proposed tariff changes identified in this filing.

Respectfully submitted,

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